

**SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-28079)**

**Filing Under the Public Utility Holding Company Act of 1935, as amended (“Act”)**

**December 30, 2005**

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application-declaration for complete statements of the proposed transactions summarized below. The application-declaration and any amendments are available for public inspection through the Commission’s Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application-declaration should submit their views in writing by **January 23, 2006**, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on Applicants at the addresses specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After **January 23, 2006**, the application-declaration, as filed or as amended, may be granted and/or permitted to become effective.

**Exelon Corporation et al. (70-10294)**

Exelon Corporation (“Exelon”), a registered holding company; Exelon’s public utility subsidiaries Commonwealth Edison (“ComEd”); Exelon Generation Company, LLC (“Exelon Generation”), 300 Exelon Way, Kennet Square, PA 19348; PECO Energy Company (“PECO”) 2301 Market Street, Philadelphia, PA; Commonwealth Edison Company of Indiana, Inc. (“Indiana Company”); Exelon’s nonutility registered holding company subsidiaries Exelon Energy Delivery Company, LLC (“Delivery”) and Exelon Ventures Company, LLC (“Ventures”); and Exelon’s nonutility subsidiaries (“Nonutility Subsidiaries”), each located at 10 South Dearborn Street, Chicago, Illinois 60603; Public Service Enterprise Group Incorporated (“PSEG”), an exempt public utility holding company, Public Service Electric and Gas Company (“PSE&G”), a public utility company subsidiary of PSEG, and its nonutility subsidiaries, each located at 80 Park Plaza, Newark, New Jersey, 07102 (collectively “Applicants”) have filed an application-declaration (“Application”) with the Commission under sections 6(a), 7, 9(a), 10, 11, 12, 13(b), 32, 33 and 34 of the Act and rules 42, 43, 44, 45, 46, 53, and 54 under the Act.<sup>1</sup>

I. Overview of the Merger

On December 20, 2004, Exelon and PSEG, an electric and gas utility holding company that claims exemption from registration pursuant to Rule 2 under Section 3(a)(1) of the Act, entered into an Agreement and Plan of Merger (the "Merger Agreement"). Under the terms of the Merger Agreement, PSEG would merge into

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<sup>1</sup> The Applicants are Exelon and its Subsidiaries and PSEG and its Subsidiaries and such other direct and indirect subsidiary companies that Exelon may form or acquire in accordance with a Commission order or otherwise in accordance with the Act or a rule promulgated under the Act.

Exelon (the "Merger"). Each PSEG shareholder would be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. Exelon common stock would be unaffected by the Merger, with each issued and outstanding share remaining outstanding following the Merger as a share in the surviving company. Upon completion of the Merger, Exelon would change its name to Exelon Electric & Gas Corporation.

As the surviving company in the Merger, Exelon would remain the ultimate corporate parent of PECO and ComEd and the other Exelon subsidiaries and become the ultimate corporate parent of PSE&G and the other PSEG subsidiaries.

Exelon would continue to be a registered public utility holding company under the Act until the six months after August 8, 2005, the date of enactment of the Energy Policy Act of 2005, and ComEd, PECO and PSE&G would continue to be public utility subsidiary companies. Exelon would remain headquartered in Chicago but would also have energy trading and nuclear headquarters in southeastern Pennsylvania and generation headquarters in Newark, New Jersey. PSE&G would remain headquartered in Newark. PECO would remain headquartered in Philadelphia and ComEd would remain headquartered in Chicago.

The Merger is subject to a number of conditions precedent, including receipt by the parties of required state and federal regulatory approvals and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), and the expiration or termination of the statutory waiting period under that act. Applicants state that, the boards of directors of Exelon and PSEG

and the shareholders of PSEG have approved the proposed Merger. Also, the shareholders of Exelon have approved the issuance of shares of common stock by Exelon.

In addition to the changes resulting from the Merger Agreement, the Applicants intend to revise their corporate structure (the "Exelon Generation Restructuring"). Applicants state that, although their plans are not yet completely finalized, they currently propose to implement the following changes, subject to approval, as required, by the Commission. After obtaining necessary approvals and third party consents, PSEG Power LLC ("PSEG Power") and its direct subsidiaries PSEG Nuclear LLC ("PSEG Nuclear"), PSEG Fossil LLC ("PSEG Fossil") and PSEG Energy Resources & Trade LLC ("PSEG ER&T") would all cease to exist as separate entities and would become part of Exelon Generation. The business functions of each of these former PSEG entities would become a part of the respective Exelon Generation business unit. The Applicants anticipate retaining the subsidiaries owned by these PSEG entities as direct subsidiaries of Exelon Generation.

Also in connection with the Merger, PSE&G would become a direct subsidiary of Delivery.<sup>2</sup> The current subsidiaries of PSE&G would remain intact. PSEG Holdings would become a subsidiary of Exelon, as the successor to PSEG. The current subsidiaries of PSEG Holdings would remain intact. PSEG Service Corporation ("PSEG Services") would sell all of its assets to Exelon Businesses Services Company ("Exelon

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<sup>2</sup> This would be accomplished through a contribution of the common stock of PSE&G held by Exelon contemporaneously with the Merger to Delivery or other appropriate corporate transaction.

BSC”), change its name, and remain as a non-energy subsidiary. Exelon BSC would be the sole "service company" of Exelon.

Applicants' Mitigation Plan was approved by the Federal Energy Regulatory Commission (“FERC”) in its “Order Authorizing Merger under Section 203 of the Federal Power Act” issued July 1, 2005 (“Merger Order”) based on, among other things, acceptance of a proposal to divest, through the sale of plant or through the sale of long-term firm energy rights, 6,600 MW of generation capacity (“Mitigation Plan”) to mitigate any generation market concentration concerns resulting from the Merger. The Mitigation Plan, according to Applicants, calls for the divestiture by sale of 4000 MW of generation capacity.<sup>3</sup> The sale would occur within twelve (12) months following close of the Merger. Applicants request Commission approval for the disposition of this generating capacity because, as a result of the Exelon Generation Restructuring, the subject generation capacity would be owned by Exelon Generation, a public utility company under the Act. The disposition of generation capacity owned by Exelon Generation, as finally approved by FERC pursuant to post-Merger compliance filings required to be made by Exelon under the FERC Merger Order (the "Post-Merger FERC Compliance Filings"), is referred to as the Generation Divestiture.

In connection with consummation of the Generation Divestiture, subsequent to the Exelon Generation Restructuring, the Applicants state they would make further revisions to their corporate structure (the "Divestiture Generation Restructurings") in respect of the particular electric generating units, or interests, being sold. The Post-Merger FERC Compliance Filings would address the particular facts of the Divestiture

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<sup>3</sup> As explained more fully below, on July 1, 2005, FERC accepted a Mitigation Plan including the Generation Divestiture.

Generating Restructurings. The Exelon Generation Restructuring, the Divestiture Generation Restructuring and the Generation Divestiture are collectively called the "Generation Transactions."

In addition to authorization of the Merger, the Exelon Generation Restructuring, the Divestiture Generation Restructuring, and the Generation Divestiture, Applicants request certain related approvals, including:

1. Authorizations related to service company and other affiliate transactions;
2. Issuance by Exelon of common stock in connection with the Merger and employee and director compensation plans as described below;
3. Authorization of the consolidation (or replacement in lieu of consolidation) of existing indebtedness and obligations of PSEG and its subsidiaries as obligations of Exelon or its subsidiaries as a result of the Merger;
4. Modifications to Exelon's existing omnibus financing authority Holding Company Act Release No. 27830 (April 1, 2004) (the "2004 Financing Order"); and
5. Approval of a Section 11(e) plan in respect of the Generation Transactions and related approvals as necessary or appropriate in respect of the tax treatment afforded by Section 1081 of the Internal Revenue Code.

## II. Description of Exelon and Its Subsidiaries

### A. Exelon

Exelon was incorporated in Pennsylvania in February 1999. On October 20, 2000, Exelon became the ultimate parent corporation for PECO and ComEd, and registered pursuant to Section 5 of the Act.

Exelon, through its subsidiaries, operates in two business segments – Delivery and Generation – as described below. In addition to Exelon's two business segments, Exelon BSC, a subsidiary of Exelon, provides Exelon and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services, as well as direction and management of shared functions for Delivery.

Delivery. Exelon's energy delivery business consists of the purchase and sale of electricity and distribution and transmission services by ComEd in northern Illinois and by PECO in southeastern Pennsylvania and the purchase and sale of natural gas and distribution services by PECO in the Pennsylvania counties surrounding the City of Philadelphia.

Generation. Exelon's generation business consists of electric generating facilities and energy marketing operations of Exelon Generation, a 49.5% interest in two power stations in Mexico, and the competitive retail sales business of Exelon Energy Company.

B. The Exelon Utility Subsidiaries

Exelon indirectly owns all of the issued and outstanding membership interests of Exelon Generation, all the issued and outstanding common stock of PECO and substantially all of the issued and outstanding common stock of ComEd,<sup>4</sup> and ComEd owns all the issued and outstanding common stock of Commonwealth Edison Company of Indiana, Inc. (the "Indiana Company") (together, the "Exelon Utility Subsidiaries").

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<sup>4</sup> In connection with the conversion of warrants and convertible preferred stock that were outstanding prior to the 2000 merger of Unicom Corporation with PECO Energy Corp., a small number of shares of common stock of ComEd (about 0.1% of the total outstanding) are not owned by Exelon but are held by third parties. See Exelon Corporation, Holding Co. Act Release No. 27256, note 4 (Oct. 19, 2000) (the "2000 Merger Order").

PECO is engaged principally in the purchase, transmission, distribution and sale of electricity to residential, commercial and industrial customers in southeastern Pennsylvania and in the purchase, distribution and sale of natural gas to residential, commercial and industrial customers in the Pennsylvania counties surrounding the City of Philadelphia. PECO is subject to regulation by the Pennsylvania Public Utility Commission ("PAPUC") as to electric and gas rates, the issuances of certain securities and certain other aspects of PECO's operations. PECO is also subject to regulation by FERC as to transmission rates, gas pipelines and certain other aspects of its business.

PECO's retail service territory covers approximately 2,100 square miles in southeastern Pennsylvania. PECO provides electric delivery service in an area of approximately 2,000 square miles, with a population of approximately 3.8 million, including 1.5 million in the City of Philadelphia. Natural gas service is supplied in an approximately 1,900 square mile area in southeastern Pennsylvania adjacent to Philadelphia, with a population of approximately 2.3 million. PECO delivers electricity to approximately 1.5 million customers and natural gas to approximately 460,000 customers.

ComEd is engaged principally in the purchase, transmission, distribution and sale of electricity to a diverse base of residential, commercial, industrial and wholesale customers in northern Illinois. ComEd is subject to regulation by the Illinois Commerce Commission ("ICC") as to rates, the issuance of certain securities, and certain other aspects of ComEd's operations. ComEd is also subject to regulation by the FERC as to transmission rates and certain other aspects of its business.

ComEd's retail service territory has an area of approximately 11,300 square miles and an estimated population of eight million. The service territory includes the City of Chicago, an area of about 225 square miles with an estimated population of three million. ComEd has approximately 3.7 million customers.

Electric utility restructuring legislation was adopted in Pennsylvania in December 1996 and in Illinois in December 1997. Both Illinois and Pennsylvania permit competition by alternative generation suppliers for retail generation supply while transmission and distribution services remain fully regulated. Both states, through their regulatory agencies, established a phased approach for allowing customers to choose an alternative electric generation supplier, required rate reductions and imposed caps on rates during a transition period, and allowed the collection of competitive transition charges from customers to recover costs that might not otherwise be recovered in a competitive market.

Effective as of January 1, 2001, Exelon effected a restructuring that involved the transfer of the electric generating assets of ComEd and PECO to Exelon Generation, a Pennsylvania limited liability company and a public utility company engaged in the generation, sale and purchase of electricity in Pennsylvania, Illinois and elsewhere and also engaged in the trading of other energy and energy-related commodities and development and ownership of exempt wholesale generators ("EWGs").

PJM Interconnection, L.L.C. ("PJM") is the independent system operator and the FERC-approved Regional Transmission Organization ("RTO") for the Mid-Atlantic and a portion of the Midwest. PJM is the transmission provider under, and the administrator of, the PJM Open Access Transmission Tariff, operates the PJM Interchange Energy

Market and Capacity Credit Markets, and conducts the day-to-day operations of the bulk power system of the PJM region. ComEd's and PECO's transmission systems are currently under the control of PJM and, by order dated October 28, 2004 (Holding Co. Act Release No. 27904) (the "PJM Order"), the Commission found that the electric utility properties of the Exelon system satisfy the interconnection requirement of Section 2(a)(29)(A) of the Act by reason of PJM's operational control of the transmission assets of ComEd and PECO.<sup>5</sup>

Both ComEd and PECO are public utility companies. ComEd is also a holding company exempt from registration pursuant to Section 3(a)(1) of the Act, by reason of its ownership of the Indiana Company. Delivery is an intermediate registered holding company and a first-tier subsidiary of Exelon. Delivery owns all of the issued and outstanding common stock of PECO and substantially all of the issued and outstanding common stock of ComEd.

Exelon Generation is also an electric utility company. Exelon Generation is a wholly owned subsidiary of Ventures, which is an intermediate registered holding company and a first tier subsidiary of Exelon. Ventures and Delivery are referred to as the "Other Registered Holding Companies." None of the Other Registered Holding Companies has securities outstanding in the hands of the public.

C. Direct Non-Utility Subsidiaries of Exelon

Exelon has direct wholly owned non-utility subsidiaries as follows:

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<sup>5</sup> In the 2000 Merger Order the Commission found that the electric utility operations of Exelon constituted a single, integrated electric utility system, and that the gas utility operations of Exelon constituted a single, integrated gas utility system that was a permissible "additional" system under the standards of Section 2(a)(11) of the Act.

Exelon BSC, a service company, provides administrative, management and technical services to Exelon and its associate companies;

Exelon Investment Holdings, LLC, an Illinois limited liability company, is a holding company for tax-advantaged housing transactions;

UII, LLC, an Illinois limited liability company, is engaged in a like-kind exchange transaction pursuant to which a portion of the proceeds from the sale of ComEd's fossil generating stations was invested in passive generating station leases with entities unrelated to Exelon. The generating stations were leased back to such entities as part of the transaction.<sup>6</sup>

Exelon has the following additional direct subsidiaries: Unicom Assurance Company, Ltd., an inactive captive insurance company, Exelon Capital Trust I, an inactive finance company, Exelon Capital Trust II, an inactive finance company and Exelon Capital Trust III, an inactive finance company.

D. Capitalization of Exelon

The total authorized shares of capital stock of Exelon consist of (i) 1,200,000,000 shares of common stock, no par value and (ii) 100,000,000 shares of preferred stock, no par value. At the close of business on December 31, 2004, 664,187,996 shares of Exelon common stock were outstanding, and no shares of Exelon preferred stock were issued and outstanding. In addition, at that date (i) 2,499,865 shares of common stock were held by Exelon in its treasury, (ii) 25,205,285 shares of common stock were reserved for issuance pursuant to outstanding options to purchase common stock granted under Exelon's Long-Term Incentive Plan, Exelon's Amended and Restated Long-Term Incentive Plan, as

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<sup>6</sup> Unicom Investment, Inc., an Illinois corporation, was reorganized as an Illinois limited liability company, UII, LLC on November 10, 2004.

amended, and Exelon's 1998 Stock Option Plan (together with Exelon's Directors' Stock Unit Plan, the "Exelon Stock Incentive Plans"), (iii) 14,777,078 shares of common stock were reserved for the grant of additional awards under the Exelon Stock Incentive Plans, (iv) 7,000,000 shares of common stock were reserved for issuance pursuant to the Dividend Reinvestment and Stock Purchase Plan, (v) 624,495 shares of common stock were reserved for issuance pursuant to outstanding performance shares, (vi) 216,000 shares of common stock were reserved for issuance pursuant to outstanding units under Exelon's Directors' Stock Unit Plan, (vii) 5,357,745 shares of common stock were reserved for issuance under Exelon's Employee Stock Purchase Plan, (viii) 1,060,053 shares of common stock were reserved for issuance pursuant to outstanding restricted shares (shares of common stock subject to forfeiture) and (ix) 1,336,516 shares of common stock were reserved for issuance pursuant to outstanding deferred shares (shares of common stock the issuance of which has been deferred pursuant to Exelon's Deferred Compensation Plan).

As of December 31, 2004, Exelon's capitalization on a consolidated basis was as follows: Common Equity (includes Retained Earnings) 40.79%; Minority Interest 0.18%; Preferred and Preference Stock 2.74%; Securitization Obligations 20.76%; Long-Term Debt 31.56%; Current Maturities of Long-Term Debt 1.85%; Total Long-Term Debt 33.41%; Short-Term Debt 2.12%.

### III. Description of PSEG and Its Subsidiaries.

#### A. PSEG

PSEG was incorporated under the laws of the State of New Jersey in 1985 and is a Section 3(a)(1) exempt public utility holding company. PSEG, through its subsidiaries,

operates in three business segments - Delivery, Generation and Enterprises, as described below. In addition to PSEG's three business segments, PSEG Services, a subsidiary of PSEG, provides PSEG and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services.

Delivery – PSEG's domestic energy delivery business consists of the transmission and distribution of electric energy and gas in New Jersey through PSE&G.

Generation – PSEG's generation businesses consist of the owned and contracted for electric generation facilities and energy marketing operations of the PSEG Power subsidiaries and the PSEG Global LLC ("PSEG Global") subsidiaries. PSEG Power has three principal direct wholly owned subsidiaries: PSEG Nuclear, PSEG Fossil and PSEG ER&T. The PSEG Power generation portfolio consists of approximately 14,607 MW of generation in the Northeast and Midwest. PSEG Global has equity ownership interests in approximately 2,404 MW of generation in North America. All the generation assets in the PSEG system are held by PSEG subsidiaries with EWG or foreign utility company ("FUCO") status under the Act or qualifying facility ("QF") status under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA").

Enterprises – PSEG's enterprise businesses consist primarily of (1) investments in energy-related financial transactions, leveraged leases, operating leases, leveraged buyout funds, marketable securities and a demand-side management business and (2) investments in international generation and delivery businesses qualified as EWGs and foreign utility companies through PSEG Resources LLC ("PSEG Resources") and through PSEG Global.

B. The PSEG Utility Subsidiary.

PSE&G is a public utility company subsidiary of PSEG. PSE&G is an electric and gas utility company engaged principally in the transmission and distribution of electric energy and gas in New Jersey. PSE&G is subject to extensive regulation by the New Jersey Board of Public Utilities ("NJBPU") as to electric and gas rates, the issuance of securities and certain other aspects of PSE&G's operations. PSE&G is also subject to regulation by the FERC as to electric transmission rates and certain other aspects of its business.

PSE&G's retail service territory covers a corridor of approximately 2,600 square miles running diagonally across New Jersey from Bergen County in the northeast to an area below the city of Camden in the southwest with a population of approximately 5.5 million. PSE&G provides service to approximately 2.0 million electric customers and approximately 1.6 million gas customers.

PSE&G does not own or operate any electric generation facilities. PSE&G, as a result of an order of the NJBPU issued under the provisions of the New Jersey Electric Discount and Energy Competition Act ("EDECA"), transferred all of its electric generation facilities, plant, equipment and wholesale power trading contracts to its affiliate PSEG ER&T in August 2000. Also, under an NJBPU order, PSE&G transferred its gas supply business, including its inventories and supply contracts, to PSEG ER&T in May 2002. PSE&G continues to own and operate its electric transmission and electric and gas distribution business. PSE&G has transferred functional control over its electric transmission facilities to PJM.

All electric and gas customers in New Jersey have the ability to choose an electric energy and/or gas supplier. For those retail electric customers located in New Jersey who do not choose a competitive electric supplier, New Jersey's Electric Distribution Companies ("EDCs"), including PSE&G, provide basic generation service ("BGS") or provider of last resort service ("POLR"). The EDCs satisfy their BGS obligations through a competitive state-wide annual auction. PSE&G's affiliate PSEG ER&T, has historically been a successful participant in these auctions and serves several EDCs including PSE&G.

For those retail gas customers located in New Jersey who do not choose a competitive natural gas supplier, New Jersey's gas distribution companies, including PSE&G, provide basic gas supply service ("BGSS") or POLR. PSE&G has entered into a full requirements contract through 2007 with PSEG ER&T to meet the supply requirements of PSE&G's gas customers.<sup>7</sup> PSEG ER&T charges PSE&G for the gas commodity costs, which PSE&G recovers from its customers. Any difference between rates charged by PSEG ER&T under the BGSS contract and rates charged to PSE&G's customers are deferred and collected or refunded through future adjustments in retail rates.

PSE&G's natural gas facilities consist entirely of local gas distribution facilities in the State of New Jersey and neither PSE&G nor any other PSEG company owns any interstate natural gas facilities subject to the Natural Gas Act.

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<sup>7</sup> The BGSS contract continues year to year thereafter unless terminated by either party consistent with its terms.

C. Direct Non-Utility Subsidiaries of PSEG.

PSEG has three direct wholly owned non-utility subsidiaries, PSEG Power, PSEG Holdings and PSEG Services.

PSEG Power has three principal direct wholly owned subsidiaries: PSEG Nuclear, which owns and operates nuclear generating stations; PSEG Fossil, which develops, owns and operates domestic fossil generating stations and other non-nuclear generating stations; and PSEG ER&T, which markets the capacity and production of PSEG Fossil's and PSEG Nuclear's stations, manages the commodity price risks and market risks related to generation and markets electricity, capacity, ancillary services and natural gas products on a wholesale basis. PSEG Power also provides specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment to its affiliates. PSEG Nuclear and PSEG Fossil are both EWGs.

PSEG ER&T conducts energy trading operations and does not own any utility assets. PSEG ER&T is subject to regulation by FERC as to its wholesale electric sales and certain other aspects of its business. As explained below, it is contemplated that PSEG ER&T will be merged into Exelon Generation.

PSEG Holdings has two principal subsidiaries: PSEG Resources, which invests primarily in energy-related, financial transactions, and PSEG Global, which invests in international generation and delivery businesses qualified as EWGs and FUCOs and domestic generation qualified as EWGs and QFs.<sup>8</sup>

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<sup>8</sup> Neither PSEG Holdings nor any of its subsidiaries is a public utility company for purposes of the 1935 Act. PSEG Holdings and its subsidiaries are more fully described in Exhibit G-7 attached to the Application.

PSEG Resources has investments in energy-related financial transactions and assets including leveraged leases, operating leases, leveraged buyout funds, limited partnerships and marketable securities. PSEG Resources also engages in demand side management services in New Jersey through its subsidiaries.

PSEG Global, through various subsidiaries qualified as FUCOs and EWGs, has investments in electric generation, transmission and distribution facilities in selected international markets and through various subsidiaries qualified as EWGS and QFs, has investments in electric generation in selected domestic markets. PSEG Global's domestic generation assets are located in California, Pennsylvania, Texas, New Hampshire and Hawaii.

PSEG Services is a non-utility service company. As explained below, it is contemplated that PSEG Services will sell all of its assets to Exelon BSC, change its name, and remain as a subsidiary.

As of December 31, 2004, PSEG's consolidated capitalization was as follows: Common Equity (includes Retained Earnings) 29.03%; Preferred and Preference Stock 6.48%; Securitization Obligations 10.55%; Long-Term Debt 49.50%; Current Maturities of Long-Term Debt 1.21%; Total Long-Term Debt 50.71%; Short-Term Debt 3.23%.

#### IV. Principal Terms of the Merger Agreement

##### A. Generally

The Merger Agreement provides for a business combination whereby PSEG will be merged with and into Exelon, with Exelon surviving. At the effective time of and as a result of the Merger, (i) each outstanding share of PSEG common stock will be converted into the right to receive 1.225 shares of Exelon common stock (the "Exchange Ratio") and (ii) each share of Exelon common stock will remain outstanding. All outstanding

PSEG stock options will be converted into options to purchase the number of shares of Exelon common stock determined by multiplying (a) the number of shares of PSEG common stock subject to such stock option immediately prior to the effective time by (b) the Exchange Ratio, at an exercise price per share of Exelon common stock equal to the exercise price per share of PSEG common stock under such stock option immediately prior to the effective time divided by the Exchange Ratio.

Following the effective time of the Merger, the surviving corporation, which will be renamed Exelon Electric & Gas Corporation, will have an eighteen-member board of directors, which will include twelve Exelon directors and six new members nominated by PSEG.

Applicants state that Exelon and PSEG have made customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants (i) by PSEG not to (a) solicit proposals relating to alternative business combination transactions or (b) subject to certain exceptions, enter into discussions concerning alternative business combination transactions, (ii) by Exelon and PSEG to cause shareholder meetings to be held to consider approval of the Merger and related transactions, (iii) subject to PSEG's right to terminate the Merger Agreement to accept a superior proposal (as described in the Merger Agreement), for the board of directors of PSEG to recommend adoption and approval by PSEG's shareholders of the Merger Agreement and related transactions and (iv) for the board of directors of Exelon to recommend approval by Exelon's shareholders of the issuance of shares of Exelon contemplated by the Merger Agreement subject to Exelon's board of directors' right to change its recommendation as required by its fiduciary duties.

Consummation of the Merger is subject to various conditions, including the requisite approval by the shareholders of Exelon and PSEG, respectively, no legal impediment to the Merger, the receipt of required regulatory approvals, the absence of a material adverse effect on Exelon, PSEG or, prospectively, the surviving corporation and the absence of certain specified burdensome actions as a condition to the regulatory approvals for the Merger. The Merger Agreement contains certain termination rights for both Exelon and PSEG, and further provides that, upon termination of the Merger Agreement, a termination fee may be payable under specified circumstances including (i) if Exelon enters into a definitive agreement to be acquired, it must pay PSEG a termination fee of \$400 million plus PSEG's transaction expenses up to \$40 million, (ii) if Exelon's board of directors changes its recommendation, it must pay PSEG's transactions expenses up to \$40 million and (iii) if PSEG's board of directors changes its recommendation or if PSEG enters into a definitive agreement for a superior proposal to be acquired it must pay Exelon a termination fee of \$400 million plus Exelon's transaction expenses up to \$40 million.

B. Accounting Treatment for the Merger

Applicants state that the Merger would be accounted for under the purchase method of accounting, the assets and liabilities of PSEG would be recorded, as of completion of the Merger, at their respective fair values and added to those of Exelon. The reported financial condition and results of operations of Exelon issued after completion of the Merger would reflect PSEG's balances and results after completion of the Merger, but would not be restated retroactively to reflect the historical financial position or results of operations of PSEG. Following completion of the Merger, the

earnings of the combined company would reflect purchase accounting adjustments, including changes to amortization and depreciation expense for acquired assets.

C. Operation of the Combined System Post-Merger

Following the Merger, ComEd, PECO and PSE&G (the "Retail Utility Subsidiaries") would all be subsidiaries of Delivery and would operate their respective electric distribution systems, and PECO and PSE&G would operate their respective gas distribution systems. The electric transmission systems of the Retail Utility Subsidiaries together with the Indiana Company would be interconnected through and subject to the functional control of a single operator, PJM. The Retail Utility Subsidiaries, the Indiana Company and Exelon Generation are referred to as the "Utility Subsidiaries."

Applicants assert that the combination of the electric utility operations of the Utility Subsidiaries would result in a single, integrated electric utility system. In addition, the combination of PSE&G's gas utility properties with those of PECO would comprise a single integrated gas utility system that may be retained by Exelon as an additional system under the standards of Section 11. Applicants note that in the alternative, the Commission could find that each of the PECO and PSE&G gas systems is a separate integrated public utility system and that the PSE&G gas system is a retainable additional system under the standards of Section 11.

V. Exelon Generation Restructuring

After obtaining necessary approvals and third party consents, Applicants state that PSEG Power and PSEG Fossil would cease to exist as separate entities and would become part of Exelon Generation. Applicants state that the Generation Transactions are

predicated on the assumption that the Exelon Generation Restructuring would precede the Divestiture Generation Restructuring and the Generation Divestiture.

After obtaining any appropriate third-party consents, including consents of certain PSEG Power debt holders to certain amendments of PSEG Power debt agreements, the Applicants would undertake the Exelon Generation Restructuring such that PSEG Power and its direct subsidiaries PSEG Nuclear, PSEG Fossil and PSEG ER&T would all cease to exist as separate entities and would become part of Exelon Generation. The business functions of these former PSEG entities would become a part of their respective Exelon Generation business unit. The subsidiaries owned by these PSEG entities would be retained as direct subsidiaries of Exelon Generation, which would continue to be an electric utility company. It is contemplated that the Exelon Generation Restructuring would take place contemporaneously with the closing of the Merger.<sup>9</sup> Applicants seek approval for the Exelon Generation Restructuring.<sup>10</sup>

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<sup>9</sup> Applicants anticipate that the current subsidiaries of PSEG Fossil that own and/or operate electric generation facilities would remain subsidiaries of Exelon Generation as EWGs. The Exelon Generation Restructuring would not result in any new "public utility" subsidiary of Exelon Generation.

<sup>10</sup> Applicants state that FERC has granted approvals related to the Exelon Generation Restructuring. The Applicants state that the New Jersey Department of Environmental Protection ("NJDEP") has determined that the Industrial Site Recovery Act ("ISRA") does not apply to the Merger and its related corporate reorganizations including the Generation Restructuring. Filings have also been made with the Connecticut Siting Council (the "Siting Counsel") and the Connecticut Department of Environmental Protection ("CDEP") with respect to the implications of the Merger and the Generation Restructuring to the generating stations located in Connecticut and owned by a subsidiary of PSEG Fossil. The Siting Counsel has approved the Merger and CDEP approval will be sought closer to the expected time of the Merger (CDEP approvals are valid only for ninety days).

## VI. Exelon Generation Divestiture

The Merger would increase the total capacity of generation resources owned or controlled by Exelon. To ensure that the combined company does not have market power in any relevant market, the Applicants state that Exelon and PSEG have proposed the Mitigation Plan designed to address in full FERC's requirements for competitive markets. As part of the plan, the companies have proposed the Generation Divestiture -- to divest a number of coal, mid-merit, and peaking generating plants. The Mitigation Plan also provides for the transfer of control of the output of a portion of their baseload nuclear generating capacity.

Applicants state that Exelon Generation owns or controls all of the Exelon system's generating assets including the electric generating units that are subject to divestiture as part of the Generation Divestiture. Applicants propose to effect the Generation Divestiture pursuant to a voluntary plan under Section 11(e) of the Act.

PSEG Fossil is an EWG and is a wholly-owned subsidiary of PSEG Power. PSEG Fossil owns directly the electric generating units that are subject to being divested as part of the Generation Divestiture.

The final divestiture proposal made by Applicants and approved by FERC in the Merger Order would result in Applicants divesting 6,600 MW of capacity. Of this, 4,000 MW would be physically divested fossil generation. Under the Merger Order, Applicants are required to make a compliance filing at FERC within 30 days of the completion of their physical divestiture, providing an analysis of the Merger's effect on competition in energy and capacity markets, given actual plants and assets divested and the actual acquirers of the divested assets. If the analysis shows that the Merger's harm to

competition has not been sufficiently mitigated, Applicants must propose additional mitigation at that time. The divestiture of the 4,000 MW contemplated in the Merger Order plus any subsequent physical divestiture ordered by FERC as necessary additional mitigation is referred to as the Generation Divestiture.

Rather than divest their nuclear baseload units, Applicants have proposed, and FERC has accepted, a "virtual divestiture" whereby they would divest, through sales of long-term firm energy rights, 2,600 MW of nuclear generating capacity in PJM East. According to the Applicants, such "virtual divestiture" would take the form of FERC jurisdictional wholesale power transactions, would not constitute the disposition of "utility assets" within the meaning of the Act, and therefore, no approval by the Commission would be required for the virtual divestiture.

Exhibit G-4 to the Application is a listing of generation facilities subject to divestiture as initially proposed by Exelon and PSEG (1,000 MW of peaking capacity and a total of 1,900 MW of mid-merit capacity of which 550 MW would be coal-fired). Subsequent to filing the Application, the proposed Generation Divestiture was expanded by an additional 1,100 MW for the total divestiture as approved in the Merger Order of 6,600 MW as noted above and certain other generation facilities were added to the list subject to divestiture. See Exhibit G-4.1 for the final list of the facilities that may be subject to the Generation Divestiture.

The Merger Order requires Applicants to execute sales agreements and make appropriate filings at FERC within twelve (12) months of the Closing of the Merger in order to implement the Generation Divestiture. The Applicants state that they intend to commence the divestiture process more quickly, but that 12 months may be necessary to

conduct a sales process, negotiate all necessary agreements and file for all necessary regulatory approvals.

Applicants state that FERC approved the Merger based upon, among other things, the Mitigation Plan. Applicants request that the Commission make the necessary findings to support relief pursuant to Section 1081 of the Internal Revenue Code with respect to the Generation Transactions. The Applicants state that none of the proposed mitigation, including the Generation Divestiture, would adversely affect the integration of the combined electric utility operations for purposes of the Act.

#### VII. Divestiture Generation Restructuring

In order to maximize the amount a buyer would be willing to pay for the Subject Assets, defined below, the Applicants state that they are considering alternative options for effecting the disposition by sale of the electric generating assets listed in Exhibit G-10 to the Application (the “Subject Assets”), as required by the Generation Divestiture. Subsequent to the Merger but prior to the implementation of any of the options set forth below, the Applicants state that Exelon would cause the assets listed in Exhibit G-11 to the Application to be transferred to Exelon Generation (“Consolidating Transfers”). Pursuant to Option 2 described below, an internal restructuring would occur immediately prior to the disposition of the Subject Assets to the buyer that would change the ownership structure of the Subject Assets. The particular tax characteristics of the sale of a generating unit, including the buyer’s desired business and tax structures, would determine which option would be utilized. Because there are likely to be multiple buyers of the Subject Assets (each buyer a “Third Party”), the Applicants may utilize either of the disposition options described below to effectuate the sale of the Subject Assets to

each Third Party (the disposition to each Third Party is referred to as a “Divestiture Transaction”). Each of the Subject Assets would be acquired pursuant to each Divestiture Transaction in exchange for cash and/or notes (the “Transfer Consideration”).

Option 1: Exelon Generation would sell each of the assets listed in Exhibit G-13 of the Application to a Third Party pursuant to the Divestiture Transaction in exchange for the Transfer Consideration. Exelon Generation may distribute to Exelon, through Ventures, the Transfer Consideration received.

Option 2: Exelon Generation would sell, in exchange for an amount of cash equal to the Transfer Consideration each of the assets listed in Exhibit G-14 to the Application to the corporation wholly-owned by Ventures that is listed as the “Acquiring Sub” next to that asset in Exhibit G-14. Exelon Generation may distribute to Exelon (via Ventures) the cash received. Ventures would then sell all of the interests in the Acquiring Sub to the Third Party in exchange for the Transfer Consideration.

The particulars of the option selected for each Divestiture Transaction would be specified in the applicable Post-Merger FERC Compliance Filing. Applicants state that each of the steps outlined in Option 2 could occur simultaneously.

#### VIII. Section 1081 Recitals

Applicants state that Internal Revenue Code Section 1081(d) provides for the nonrecognition of gain or loss from certain intercompany transactions between members of the same system group if such transactions are made in obedience to a Commission order.

Applicants request that the order on this Application: (i) recite that the sale or disposition of generating units as part of the Generation Transactions is necessary or appropriate to the integration or simplification of the post-Merger Exelon holding company system and to effectuate the provisions of section 11(b); and (ii) require post-Merger Exelon to take appropriate actions to cause its direct and indirect subsidiaries, as the case may be, to complete the Generation Divestiture as required in order to comply with the Merger Order.

IX. Affiliate Transactions

A. Service Company Transactions

Applicants state that, under the 2000 Merger Order, the Commission authorized Exelon to organize and capitalize Exelon BSC as a service company subsidiary, and authorized Exelon BSC to provide ComEd, PECO and other companies in the Exelon system with administrative, management, engineering, construction, environmental, and other support services pursuant to a General Services Agreement.

Further, Exelon filed a post-effective amendment in File No. 70-9645 describing its accounting systems and cost allocation methodologies and request a supplemental order of the Commission, as required by the 2000 Merger Order. On October 31, 2003, Exelon submitted a 60-day letter that, as supplemented, described certain proposed changes in allocation methods for "corporate governance costs," and the reorganization of Energy Delivery Shared Services, a business unit of Exelon BSC that would begin to provide new services to ComEd and PECO effective January 1, 2004.<sup>11</sup>

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<sup>11</sup> Under the 2000 Merger Order, Exelon BSC is required to give written notice to the Commission at least 60 days prior to implementing any change in the type and character of the companies receiving services, the methods of allocating costs to associate companies, or the scope or character of services to be rendered.

In connection with the Merger, the Applicants state that PSEG Services would sell all of its assets to Exelon BSC, change its name and remain as a subsidiary. Post-Merger, Exelon BSC intends to add the former PSEG companies as client companies under the General Services Agreement and would provide to the new client companies the same administrative, management, and technical services that it now provides to Exelon system companies, utilizing the same work order procedures and the same methods of allocating costs that are specified in the General Services Agreement.<sup>12</sup> In connection with the Transaction, certain employees of PSEG Services may be transferred to and become employees of Exelon BSC, which would be the sole subsidiary service company for the Exelon system.

Exelon requests that the Commission find, that Exelon BSC would continue to be organized and conducted in accordance with Section 13(b) of the Act. Applicants request authority to delay the full implementation of all services and systems relative to the new PSEG clients until after February 8, 2006.

B. Other Inter-Company Goods and Services At Cost

1. Incidental Services

The 2000 Merger Order recognized that ComEd, PECO and Exelon Generation may provide services incidental to their utility businesses, such as infrastructure services and storm outage emergency repairs, to one another and other associate companies in accordance with rules 87, 90 and 91. Accordingly, Applicants propose that, following the Merger, PSE&G also may provide these incidental services to, or receive these incidental services from, the other Exelon companies. PSE&G also may provide goods,

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<sup>12</sup> Exelon and PSE&G are seeking approval of the General Services Agreement from the NJBPU.

through a leasing arrangement or otherwise, to one or more associate companies, and may use certain assets for the benefit of one or more associate companies.

2. Services Required for the Efficient Operation of Exelon Generation's Businesses

Under the 2000 Merger Order, the Commission authorized Exelon Generation and any future subsidiary of Exelon Generation and AmerGen Energy Company, LLC ("AmerGen") to provide services at cost to each other as required for the efficient operation of the Exelon system generating facilities. Although Exelon Generation is an "electric utility company" under the Act, it is not subject to state rate regulation and has no "captive" customers. Following the Merger, as is the case now, Exelon Generation would own and operate generating facilities, engage in energy marketing and trading, and invest in and own exempt wholesale generators, intermediate companies and other permitted investments such as Rule 58 energy-related companies, all of which are operated as an integral part of its system generating facilities. Accordingly, Exelon Generation proposes that post-Merger it, and all of its current and future subsidiaries, including the former PSEG subsidiaries, provide services at cost to each other.

3. Services at the Interface between Generation and Transmission and Distribution

Under the 2000 Merger Order, the Commission authorized Exelon Generation to render and receive services at cost from ComEd and PECO related to the interface -- primarily switchyard facilities -- between the generation function of Exelon Generation and the transmission and distribution functions of ComEd and PECO. Applicants request authorization for ComEd, PECO, PSE&G, Exelon Generation and its subsidiaries to

render and receive the same types of services at cost, among each other following the Merger.

4. Exelon Generation Services in Connection with Supply of Electricity and Natural Gas

a. Scheduling Coordination Agreements. Applicants state that PSE&G is obligated to purchase electricity from certain QFs, is obligated to purchase electricity from certain EWGs under restructured former PURPA contracts, and receives an allocation of hydroelectric power from the St. Lawrence Power Project. Further, that under a stipulation filed at the NJBPU, PSE&G is obligated to resell this power at wholesale into the PJM spot market. As PSE&G owns no generation and engages in no other wholesale energy transactions, it, relies upon its affiliate PSEG ER&T to schedule these transactions on its behalf and to submit bids for capacity as directed by PSE&G. PSEG ER&T also fulfills certain billing and accounting functions with respect to such energy and capacity. These services are provided under two agreements ("Scheduling Coordination Agreements") pursuant to which PSE&G receives the full PJM market value for the electricity. PSE&G either (i) pays PSEG ER&T a cost-based fee, or (ii) enables PSEG ER&T to receive a credit from PJM for capacity from the purchases described above against any emergency power it would otherwise have to pay for under the PJM Open Access Transmission Tariff. The Applicants represent that the Scheduling Coordination Agreements will be assumed by Exelon Generation by operation of law.

b. BGSS Gas Contract. The Applicants state that PSEG ER&T provides full-requirements gas supply service to PSE&G pursuant to a contract approved by the NJBPU for the purpose of satisfying all of PSE&G's retail gas service obligations ("BGSS Gas Contract"). As part of the transaction approved by the NJBPU,

PSEG ER&T assumed the PSE&G entitlements under most of its gas transportation and storage contracts with interstate pipelines. In a few cases, the entitlements remained with PSE&G and PSEG ER&T administers the contracts as PSE&G's agent. The Applicants state that the BGSS Gas Contract will be assumed by Exelon Generation by operation of law.

Under the 2000 Merger Order, the Commission authorized Exelon Generation to provide, at cost, supply planning services and assistance to ComEd and PECO and to assist the utilities in obtaining energy supply resources from unaffiliated sellers, in each case in connection with the utility's unbundled retail sales and/or wholesale sales, to the extent that energy supply is not provided by Exelon Generation. Applicants state that the Retail Utility Subsidiaries might require assistance from Exelon Generation with respect to the procurement process for the procurement of energy for the utilities' bundled as well as unbundled retail sales. For this reason, and also to allow Exelon Generation to provide any jurisdictional services currently provided by PSEG ER&T pursuant to the Scheduling Coordination Agreements and the BGSS Gas Contract, the Applicants request that the authorization obtained in the 2000 Merger Order be modified not only to include PSE&G, but also to relate to the Retail Utility Subsidiaries' bundled retail sales, as well as unbundled retail sales and/or wholesale sales, of both electricity and natural gas. Thus, the Applicants request that the Commission authorize Exelon Generation to provide, at cost, supply planning services and assistance to the Retail Utility Subsidiaries and to assist the utilities in obtaining, or disposing of, energy supply resources from unaffiliated sellers, in each case in connection with the Retail Utility Subsidiaries' bundled and

unbundled retail sales and/or wholesale sales, to the extent that energy supply is not provided by Exelon Generation.<sup>13</sup>

5. Modification of Intercompany Services Authorized by the 2000 Merger Order

Applicants state that ComEd currently provides to and receives from affiliates certain services in accordance with an Affiliated Interests Agreement ("ComEd AIA") approved by the ICC. PECO's form of Mutual Services Agreement ("PECO MSA") under which PECO provides and receives certain services from affiliates has been approved by the PAPUC. In connection with the Merger, Applicants state that PSE&G plans to enter into a Mutual Services Agreement (the "PSE&G MSA") to govern affiliated interest transactions between PSE&G and its affiliates at cost, consistent with Rules 90 and 91.<sup>14</sup>

Applicants state that the 2000 Merger Order approved individual contracts pursuant to which ComEd and PECO received or rendered services at other than cost. Further, that those arrangements or contracts have all either concluded, or are being conducted currently at cost. Exelon proposes to modify the service providers and recipients under the types of services so described in the 2000 Merger Order so that each of ComEd, PECO, PSE&G and Exelon Generation may provide, at cost, the listed

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<sup>13</sup> Applicants state that the described services will be provided at cost, with the exception of some services under the Scheduling Coordination Agreements, which provide, as an alternate mechanism for PSE&G to compensate PSEG ER&T (Exelon Generation after the Exelon Generation Restructuring) for scheduling coordination services, for PSEG ER&T to receive a credit from PJM for capacity.

<sup>14</sup> Exelon and PSE&G are seeking approval of the PSE&G MSA from the NJBPU.

services to associate companies in the new Exelon system under the same conditions as currently apply to the Exelon system companies.<sup>15</sup>

In addition to the services authorized by the 2000 Merger Order, Applicants request authorization for the following additional services to be provided at cost. These services would also be subject to the reporting requirements discussed above:

- a) PowerLabs Services to ComEd, PECO and PSE&G. Exelon Generation was authorized to provide Instrument Calibration services to PECO and, since the time of the 2000 Merger Order, has done so through Exelon PowerLabs, LLC ("PowerLabs"), a first-tier Rule 58 subsidiary of Exelon Generation. PowerLabs also provides Instrument Calibration and other technical services at cost, pursuant to Rule 87(b)(1), to Exelon BSC, which passes them through, at cost, to ComEd and PECO. Applicants request that PowerLabs be authorized to provide Instrument Calibration and other technical services, (including component testing and failure analysis) at cost, directly to ComEd, PECO and PSE&G, in addition to Exelon Generation.
- b) Energy Efficiency Audit Services by the Retail Utility Subsidiaries to Other Exelon Companies. ComEd Technical Services performs site efficiency assessments, which review current energy use profiles and identify cost-savings opportunities ("Energy Efficiency Audit Services"). ComEd has

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<sup>15</sup> Such services include: services provided by the Retail Utility Subsidiaries: regulatory and legislative services, call center, central mail, fleet services, real estate and facilities, distribution technical services, telephone overflow coverage, strategic marketing and sourcing, installation and maintenance of substation equipment, purchase of materials and logistics, metering equipment and rubber goods, customer services rep emergency training, environmental and lab services, training for electrical and fire; and services provided by Exelon Generation: instrument calibration, operation of Richmond Frequency Converters and synchronous condenser maintenance.

provided a small volume of these services at cost to Exelon Generation and PECO under Rules 87, 90 and 91. Applicants request the Retail Utility Subsidiaries be authorized to provide Energy Efficiency Audit Services to other companies in the Exelon system at cost.

- c) Exelon Generation Maintenance, Repair and Plant Engineering Services. PSEG Power provides a range of specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment. PSEG Power provides these services to PSEG Fossil and its EWG subsidiaries, as well as to PSEG Nuclear, PSE&G and PSEG Services. PSEG Power charges its affiliates a blended hourly rate that recovers the fully allocated cost of providing these services. PSEG Power charges PSE&G approximately \$3.4 million on an annual basis for the services it provides to PSE&G. PSEG Power charges PSEG Fossil's EWG subsidiaries approximately \$150,000 on an annual basis for the services it provides to these entities. After the Exelon Generation Restructuring, PSEG Power will be part of Exelon Generation. Thus, Applicants request authorization for Exelon Generation to provide these services, at cost, to other Exelon companies, including, PSE&G, Exelon BSC, ComEd and PECO.
- d) Peak Shaving Services. To facilitate PSEG ER&T's provision of BGSS to PSE&G, PSE&G provides a peaking natural gas supply to PSEG ER&T from three Liquefied Propane Air ("LPA") Plants and one Liquefied Natural Gas ("LNG") Plant. PSE&G charges PSEG ER&T for all labor, material and other costs that are required to operate and maintain the facilities along with a

carrying cost for the return on and depreciation of the investment. Applicants request authorization for PSE&G to provide these peak shaving services to Exelon Generation, as successor to PSEG ER&T and for PECO to provide similar peak shaving services to Exelon Generation, in the event PECO enters into similar arrangements with Exelon Generation.

- e) All services required to manage and operate the facilities of the Indiana Company are provided by either Exelon BSC or ComEd. Exelon BSC has authority to provide the services it currently provides to the Indiana Company. To date, ComEd has provided, at cost, incidental services in connection with operation and maintenance of the Indiana Company's transmission assets, as well as various administrative and managerial services. Applicants request that ComEd be authorized to provide operation and maintenance services and administrative and managerial services, at cost, to the Indiana Company on an ongoing basis.

X. Issuance of Common Stock in the Merger

Exelon requests approval to issue that number of shares of its common stock necessary to comply with its obligations under the Merger Agreement. Exelon expects that it would issue approximately 341 million shares of common stock to the former holders of PSEG common stock in the Merger. This includes approximately 14 million shares of common stock, or options on its common stock, that Exelon would be required to issue at the consummation of the Merger to satisfy the obligations under various PSEG stock option and employee benefit plans.

Upon completion of the Merger, each outstanding option to purchase shares of PSEG common stock would be assumed by Exelon and substituted with an option to purchase shares of Exelon common stock, exercisable on generally the same terms and conditions that applied before the Merger. The number of shares of Exelon common stock subject to the substitute Exelon stock option would equal the number of shares of PSEG common stock subject to the PSEG stock option immediately prior to completion of the Merger, multiplied by the exchange ratio, rounded down to the nearest whole share. The per share exercise price of each substitute Exelon stock option would equal the exercise price of the PSEG stock option immediately prior to completion of the Merger divided by the exchange ratio, rounded up to the nearest whole cent. In addition, upon completion of the Merger, Exelon would assume all PSEG equity-based awards and substitute them with equity-based awards with respect to shares of Exelon common stock on generally the same terms and conditions that applied before completion of the Merger. The number of shares of Exelon common stock issuable under those awards, and the exercise prices for those awards, would be adjusted to take into account the exchange ratio (1.225) in the Merger.

#### XI. PSEG Indebtedness Assumed

As a consequence of the Merger and the Exelon Generation Restructuring, all the existing consolidated indebtedness of PSEG would become consolidated indebtedness of Exelon. As the surviving entity in the Merger, Exelon would become the successor obligor on all outstanding indebtedness directly issued by PSEG. Further, subject to receipt of the appropriate consents, upon the Exelon Generation Restructuring, indebtedness and obligations of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG

ER&T would become obligations of Exelon Generation. Prior to the closing of the Merger, PSEG Power's debt holders would be solicited for consent to amendments to certain of its existing debt instruments to reflect the changes in credit profile and other circumstances that would result from the assumption by Exelon Generation of PSEG Power indebtedness.

Applicants state that Exelon would not legally assume or become successor obligor on any outstanding indebtedness of PSEG system companies, except for PSEG indebtedness for which Exelon is successor obligor. Exelon may issue guaranties on behalf of former PSEG system companies subject to the limitations on guaranties contained in the 2004 Financing Order, modified as described below. Likewise, except for the obligations of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T for which Exelon Generation becomes successor obligor in the Generation Restructuring, Exelon Generation would not legally assume any outstanding indebtedness of any PSEG system company. Exelon Generation may issue guaranties on behalf of former PSEG system companies subject to the limitations on guaranties contained in the 2004 Financing Order, modified as described below.

Applicants seek approval for the consolidation of indebtedness, or in the case of Exelon and Exelon Generation, becoming the successor obligor under the indebtedness, and continuation of inter-company guaranties, as described above. Applicants further request authority to continue existing financing arrangements, guarantees and hedging arrangements, as well as any transactions undertaken to extend the terms of or replace, refund or refinance existing obligations and the issuance of new obligations in exchange for existing obligations, provided in each case that the issuing entity's total capitalization

is not increased as a result of such financing transaction except as permitted by the 2004 Financing Order modified as discussed below.

XII. Modifications to 2004 Financing Order

A. The 2004 Financing Order

The Commission issued the 2004 Financing Order which authorized, through April 15, 2007, certain financing transactions, including the issuance of common stock, preferred securities, equity-linked securities, long-term debt and short-term debt in an aggregate amount not to exceed \$8 billion above the amount outstanding for Exelon and Exelon Generation at December 31, 2003, with no separate sublimit for short-term debt. The 2004 Financing Order also authorized the use of up to \$4 billion of the proceeds of financings for investments in EWGs and FUCOs, and reserved jurisdiction over a request to use an additional \$3 billion of the proceeds of financings for investments in EWGs and FUCOs.

Because the 2004 Financing Order did not contemplate a transaction of the magnitude of the current Merger, Exelon requests approval for the issuance of its common stock in the Merger and related to stock options and employee plans. Except for the issuance of common stock in the Merger and the specific modifications listed below, however, Applicants state that Exelon does not seek any changes to the approvals granted in the 2004 Financing Order.

In particular, Exelon is not proposing to increase the authorized amount of new financing it will be permitted above the existing authorized \$8 billion. Applicants, citing to the 2004 Financing Order, note: "Applicants state that [the \$8 billion External Limit] does not include the refunding or replacement of securities where capitalization is not

increased from that in place at [a specified date]. Applicants state that any refunding or replacement of securities where capitalization is not increased from that in place at [the specified date] will be through the issuance of securities of the type authorized in [the 2004 Financing Order]." Applicants request that the base level of capitalization, against which the authorized increase of \$8 billion will be measured, will be adjusted to be the pro forma capitalization of Exelon or Exelon Generation, as the case may be, as of the date of consummation of the Merger and Exelon Generation Restructuring.

Exelon proposes that the 2004 Financing Order will remain in full force and effect, including all parameters, restrictions and conditions imposed in the 2004 Financing Order, except to the extent expressly modified by the Commission's order in this matter.

1. Requested Modifications of 2004 Financing Order<sup>16</sup>

Applicants seek the following modifications to the 2004 Financing Order:

- i. The definition of "Utility Subsidiaries" under the 2004 Financing Order be amended to include PSE&G, and the definition of "Nonutility Subsidiaries" be amended to include all non-utility subsidiary companies of PSEG.
- ii. The Utility Money Pool authority be amended to permit: (a) PSE&G to become a participant in the Utility Money Pool, with a participation limit for borrowing of \$1 billion, and (b) Exelon Generation to borrow up to \$1.5 billion (an increase from \$1 billion) at any one time outstanding from

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<sup>16</sup> Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the 2004 Financing Order.

the Utility Money Pool<sup>17</sup>, and (c) PSEG Holdings to participate in the Utility Money Pool as a lender to, but not as a borrower from, the Utility Money Pool.

- iii. To authorize the establishment of a Nonutility Money Pool.
- iv. To add authority for PSE&G to enter into Hedge Instruments and Anticipatory Hedges of the same type and under the same conditions as authorized under the 2004 Financing Order.
- v. To add authority for Exelon to enter into guarantees to or on behalf of the PSEG companies, and PSE&G to enter into Non-Exempt Utility Guarantees, all under the terms and conditions authorized under the 2004 Financing Order.
- vi. To increase to \$8 billion (from the current \$6 billion) the aggregate authority for Exelon and Exelon Generation to issue guaranties.
- vii. To add authority for PSE&G to pay dividends out of capital to the extent of PSE&G's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.
- viii. To add authority for Delivery to pay dividends out of capital to the extent of PSE&G's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.

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<sup>17</sup> Applicants state that the 2004 Financing Order authorized Unicom Investments, Inc. to participate in the Utility Money Pool as a lender only. Unicom Investments, Inc. has been reorganized and is now UII, LLC.

- ix. To add authority for Exelon Generation to pay dividends out of capital to the extent of the retained earnings of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.
- x. To add authority for Ventures to pay dividends out of capital to the extent of the retained earnings of (A) PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting and (B) PSEG Holdings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting in the event PSEG Holdings becomes a subsidiary of Ventures rather than a direct subsidiary of Exelon.<sup>18</sup>
- xi. To increase Exelon's authority to pay dividends out of capital by the amount of PSEG's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.<sup>19</sup>
- xii. To add authority for Exelon, Exelon Generation, Ventures, Delivery and PSE&G to declare and pay dividends out of current earnings before any

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<sup>18</sup> Such dividend authority is requested in the event that Exelon were to do an internal restructuring to move PSEG Holdings, a non-utility subsidiary to be a subsidiary of Ventures rather than as a direct first tier subsidiary of Exelon as is contemplated following the Merger.

<sup>19</sup> This new approval would not affect the authority of ComEd and Exelon to pay dividends out of capital as approved in the 2004 Financing Order.

deduction resulting from impairment of goodwill or other intangibles recognized as a result of the Merger.<sup>20</sup>

- xiii. To increase to 75 million shares (from 42 million shares approved by the 2004 Financing Order) the number of shares of Exelon common stock that may be issued, following the Merger, under Exelon's dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans, including PSEG plans assumed as part of the Merger, as described below (collectively, the "Plans").
- xiv. To increase the amount of financing proceeds that may be used for investments in EWGs and FUCOs such that "aggregate investment" does not exceed \$8 billion (an increase from \$4 billion currently authorized).
- xv. To provide that the base capitalization against which the limit of additional financing of \$8 billion authorized in the 2004 Financing Order is measured shall be the pro forma capitalization of Exelon or Exelon Generation as the case may be, as of the date of consummation of the Merger and the Exelon Generation Restructuring. As required under the 2004 Financing Order, all financing where capitalization is not increased from that in place at the Merger date will be through the issuance of securities of the type authorized in the 2004 Financing Order, modified as

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<sup>20</sup> Applicants ask the Commission to reserve jurisdiction over this request pending completion of the record.

described herein, and subject to the Financing Parameters (as defined in the 2004 Financing Order).<sup>21</sup>

xvi. To add authority for Exelon Generation to engage in tax-exempt financing pursuant to sale or lease transactions of its utility assets as described below.

2. Parameters for Financing Authorization.

The proposed financing transactions would be subject to the Financing Parameters, as set forth in the 2004 Financing Order. The 30% common equity condition shall apply to PSE&G as a "Utility Subsidiary." The 30% Condition would be unchanged for Exelon, ComEd, PECO and Exelon Generation. Finally, the Investment Grade Condition (as defined in the 2004 Financing Order) would apply to PSE&G to the extent it requires Commission approval for any securities issuance.

3. Filing of Certificates of Notification

Exelon currently files quarterly reports in connection with the 2004 Financing Order. Applicants propose to continue to file Rule 24 certificates through February 8, 2006 containing the information required by the 2004 Financing Order for the post-

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<sup>21</sup> The capitalization base for Exelon and Exelon Generation, respectively, would be measured according to the balance sheet prepared to reflect consummation of the Merger, by taking the post-Merger outstanding common stock or membership interests (excluding retained earnings), preferred and preference securities, long-term debt, short-term debt, current portion of long-term debt and securitization obligations, as applicable, of Exelon and Exelon Generation. Increases in capitalization through securities issuances of Exelon and Exelon Generation, as the case may be, would count towards the \$8 billion limit; but increases in consolidated capitalization resulting from exempt securities issuances (such as issuances of state commission approved securities by the Retail Utility Subsidiaries) and increases to retained earnings will not reduce available financing. Retirement or redemption of securities or reductions in equity through stock buybacks by Exelon or Exelon Generation, as the case may be, in each case with available funds will correspondingly increase available financing.

Merger Exelon system, including equivalent information relating to former PSEG system subsidiaries.

4. Increase in Shares for Plans; New and Adopted Plans

The 2004 Financing Order authorized Exelon to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 42 million shares of Exelon common stock (adjusted for a stock split) under Exelon's dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans. Such issuances are in addition to common stock that may be issued under the general financing authorization of \$8 billion. Exelon proposes to increase the number of shares authorized for this purpose to 75 million to accommodate two new Exelon plans and the former PSEG plans that would become Exelon's responsibility following the Merger. Exelon stock would be used, following the Merger, to satisfy requirements under the PSEG plans to provide common stock.

5. Nonutility Money Pool

In the 2004 Financing Order, the Commission reserved jurisdiction over the formation of the Nonutility Money Pool. Applicants request that the Commission release jurisdiction over the formation of the Nonutility Money Pool. The Nonutility Money Pool is to be operated on the same terms and conditions as the Utility Money Pool, except that Exelon funds made available to the Money Pools would be made available to the Utility Money Pool first to the extent it is operated and needed and thereafter to the Nonutility Money Pool. None of the Utility Subsidiaries would be a participant in the Nonutility Money Pool, and no loans through the Nonutility Money Pool would be made to, and no

borrowings through the Nonutility Money Pool would be made by, Exelon, Ventures or Delivery.

Furthermore, Applicants request authority for other Non-Utility Subsidiaries (i.e., Non-Utility Subsidiaries that are not currently anticipated to participate in the Non-Utility Money Pool and such that are acquired or formed in the future, collectively, "Other Non-Utility Subsidiaries") may lend funds to and borrow from the Non-Utility Money Pool, when established, without the need for additional authority from the Commission.

#### 6. Exelon Generation Tax-Exempt Financing

Applicants state that Exelon Generation may be able to incur lower financing costs by taking advantage of tax-exempt financing where a governmental entity, such as a county or a state authority or agency, issues securities and lends the proceeds to Exelon Generation or where Exelon Generation sells or leases an undivided interest in one or more of its generating facilities and related assets to the governmental entity and leases back or purchases the assets and operates such assets as before. In connection with such transactions, Exelon Generation seeks approval for the sale, lease or other transfer and lease back, purchase or other operating arrangement of generating and related assets that constitute utility assets under the Act. Such sale, lease or other transfer and lease back, purchase or other operation arrangement would be solely for financing purposes and would not affect the operation of the assets.

### XIII. Retention of Nonutility Subsidiaries

Exhibit G-7 (attached to the Application) lists and describes those non-utility businesses conducted by PSEG and its subsidiary companies. As a result of the Merger, those non-utility businesses and interests would become businesses and interests of

Exelon. Except as discussed (in Exhibit G-7), Applicants request authority to retain these non-utility interests.

Applicants ask the Commission to find that pre-existing investments by PSEG and its subsidiaries in "energy-related companies" prior to the effective date of Rule 58 will not count in the calculation of the 15% limitation for purposes of the safe harbor under Rule 58.

#### XIV. Post-Merger Corporate Structure: The Intermediate Holding Company

Post-Merger, there would be one instance of a "great-grandfather" holding company, the existence of which the Commission approved in the 2000 Merger Order. Exelon, through Delivery, owns substantially all of the outstanding common stock of ComEd which, in turn, is a holding company for the Indiana Company. The Indiana Company has no retail customers and owns only transmission facilities with a depreciated book value at December 31, 2004 of only \$7.4 million. The operation of the Indiana Company's transmission facilities is subject to the control of PJM. Accordingly, the Indiana Company has virtually no business operations with outside third parties.

Applicants state that, PSE&G has pending an application with the NJBPU seeking approval in connection with the issuance of up to \$150 million of securitization obligations under N.J.S.A. 48:3-57. If the application is approved, Applicants state that the NJBPU would authorize a transition bond charge which amounts would be sold by PSE&G to a special purpose Financing Subsidiary in connection with the securitization financing. Because PSE&G will be covered by the general authorizations applicable to the Exelon system approving formation and activities of Financing Subsidiaries and entering into servicing agreements at "market rates" in compliance with rating agency

requirements, Applicants state that PSE&G will need no further approval from the Commission for the proposed \$150 million securitization financing.

Exelon (70-10294) and the other Applicants state that they consent and agree that consummation by them of the Merger shall constitute their acceptance of the survival of the Implementation Order notwithstanding the effectiveness of the repeal of the Act.

Jonathan G. Katz  
Secretary